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# Supreme Court of the United States

October Term, 1944.

No. 570.

**EDWARD A. HUNT and ROBERT A. HUNT**, Co-partners trading as **HUNT'S MOTOR FREIGHT AND FOOD PRODUCTS TRANSPORT**,

*Petitioners,*

*vs.*

**EDWARD CRUMBOCH**, President; **JOSEPH E. GRACE**, Secretary-Treasurer; **WILLIAM F. KELLEHER**, International Vice-President, Business Agent and Trustee; **JOHN FISHER**, Business Agent and Trustee; **PAUL PESSANO**, **DAVID DAVIS**, **J. J. MURPHY**, **JOSEPH BILLINGTON** and **CHARLES BERWICK**, Trustees; **RAYMOND COHEN**, Business Agent and **R. J. KELLY**, Business Representative and Recording Secretary of the **BROTHERHOOD OF TRANSPORTATION WORKERS, LOCAL 107, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA**, and all persons forming the total membership of the said **BROTHERHOOD OF TRANSPORTATION WORKERS, LOCAL 107, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA**,

*and*

**EDWARD CRUMBOCH**, **WILLIAM F. KELLEHER**, **JOHN FISHER**, **JOSEPH BILLINGTON**—and **RAYMOND COHEN**, individually.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

## BRIEF FOR RESPONDENTS IN OPPOSITION.

**WILLIAM A. GRAY**,  
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## OPINIONS BELOW.

The Opinion of the District Court appears in the record at pages 52-62, and is reported in the official reports in 47 Fed. Supp. 571 (October 30, 1942).

The Opinion of the Circuit Court of Appeals, Third Circuit, appears in the record at pages 64-68, and is reported in the official reports in 143 Fed. 2d 902 (July 12, 1944).

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## JURISDICTION.

The judgment of the United States Circuit Court of Appeals, Third Circuit, was entered on July 12, 1944. Petition for Writ of Certiorari was filed in this Court on October 9, 1944. Jurisdiction of this Court is invoked under Section 240(a) of the *Judicial Code*, as amended by the Act of February 13, 1925, c. 229, Section I, 43 Stat. 938 (28 U.S.C.A. 347).

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## STATEMENT OF THE CASE.

The facts of this case, as stated by the Circuit Court of Appeals, are as follows (143 F. 2d 902, 903):—

“The plaintiffs are copartners trading under the name of Hunt's Motor Freight and Food Products Transport. For a period of about fourteen years prior to February 4, 1939, practically the sole business of the plaintiffs was to transport produce and foodstuffs by motor truck for The Great Atlantic & Pacific Tea Company (commonly known as the A & P) under contracts,



*Statement of the Case*

both written and oral, with that company. From 80% to 85% of this transportation was interstate from and to Philadelphia. The trade union defendant, Brotherhood of Transportation Workers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, is an unincorporated association of drivers and helpers engaged in 'over the road hauling' and is affiliated with the American Federation of Labor. It is affiliated with numerous local and subsidiary unions situated throughout the United States, each of which represents a separate branch or class of employees engaged in and about the loading and hauling of produce by trucks.

Sometime in 1937 the union called a strike of the truckers and haulers of the A & P in Philadelphia for the purpose of enforcing a closed shop. The plaintiffs attempted to operate during the strike, and in July of 1937 refused the offer of the union to negotiate. The strike was attended with great violence and on September 4, 1937, one of the men connected with the union was shot and killed at or near the union headquarters. One of the plaintiffs, Edward A. Hunt, was tried in the Philadelphia courts for this homicide and was acquitted. On December 13, 1938, the A & P entered into a closed shop agreement with the union whereby the A & P recognized the union as the bargaining agent for its employees, as a result of which the various contract haulers who were similarly situated as the plaintiffs with the A & P recognized the union as the bargaining agent for their employees.

As a result of the agreement thus made between the A & P and the union, all employees of the A & P's various contract haulers were notified that they were required to join and become members of the union. At

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the time of the making of the closed shop agreement, the A & P had been employing the services of some twenty-five haulers (including plaintiffs) who were using about forty-eight trucks. The plaintiffs had eight trucks. All the haulers for the A & P except plaintiffs joined the union or made closed shop agreements with it. The plaintiffs attempted to make an agreement with the union but the union refused to negotiate, and still refuses to do so. The employees of the plaintiffs have attempted to join the union, but were refused admission as long as they remained employees of the plaintiffs.

On February 4, 1939, the A & P at the instigation of the union cancelled its contract with the plaintiffs as of March 10, 1939, on the ground that plaintiffs were non-union. The plaintiffs' services had otherwise been satisfactory. From about November 6, 1939 to February 12, 1940 plaintiffs did interstate hauling for Sterling Supply Company of Philadelphia, but were compelled to desist under the same circumstances as accompanied the loss of the A & P contract. The elimination of the plaintiffs' services did not in any manner affect the interstate operations of the A & P or the Sterling Supply Company. The business of plaintiffs has been destroyed by reason of the union's refusal to negotiate with plaintiffs and the union's unwillingness to admit plaintiffs and their employees into the union."



*Argument***ARGUMENT.**

The gist of this case is that the defendant labor union for good and sufficient reasons, refused to enter into contractual relations with the plaintiffs, or to admit plaintiffs' employees to membership in the Union, the indirect effect of which was to force plaintiffs out of business because plaintiffs could sell their services only to firms having closed shop agreements with the Union.

The labor union's reasons for its hands-off policy toward plaintiffs, as stated in the Opinion of the Circuit Court of Appeals, were (143 F. 2d 902, 903):—

"Sometime in 1937 the Union called a strike of the truckers and haulers of the A & P in Philadelphia for the purpose of enforcing a closed shop. The plaintiffs attempted to operate during the strike, and in July of 1937 refused the offer of the union to negotiate. The strike was attended with great violence and on September 4, 1937, one of the men connected with the union was shot and killed at or near the union headquarters. One of the plaintiffs, Edward A. Hunt, was tried in the Philadelphia courts for this homicide and was acquitted."

Plaintiffs' going out of business had no actual effect either on the volume of goods transported in interstate commerce or on the cost of transportation. Plaintiffs' former employers simply engaged other available haulers instead of plaintiffs "and continued to transport the same quantity of produce, foodstuffs and other products in interstate commerce as they would have done had they re-

*Argument*

newed their hauling contract with the plaintiffs . . . and . . . there was no increase in the cost of hauling traceable to the acts of the defendants in eliminating the plaintiffs from the field". (Opinion of the Circuit Court of Appeals, 143 F. 2d 902, 903, 904.)

The Courts below correctly held that on such facts no case under the federal anti-trust laws is made out.

These laws were never intended to force a labor union to enter into contractual relations with or admit to membership, any persons reasonably regarded as objectionable.

It is obvious from the record that the plaintiffs were instrumental in attempting to break the Union's strike in 1937 and that the officials of the Union had reason to believe that the shot that killed one of the Union's members on September 4, 1937, was fired by plaintiff, Edward A. Hunt. Edward Crumbock, Manager of the Union, testified on cross-examination as follows (R. 612):—

"Q. Mr. Crumbock, when was it decided that Hunt was out?

A. When he killed my—when he killed my man, so far as that was concerned."

There is no doubt that these were the considerations which actuated the Union.

In other words, the Union did not intend to affect interstate commerce in any way.

As above said, no actual effect was imposed.

All that the Union did was to exercise the right to decide for itself with whom it would contract, and whom it would admit to membership. Such a right is inherent in all voluntary associations, and is absolute in the sense that it may be exercised in the absence of any specific reasons. (*Arnstein v. American Society of Composers, Authors and Publishers, et al* (1939), 29 F. Supp. 388, 393.) In the case at

## Argument

bar, as aforesaid, the defendant union had weighty reasons for deciding not to contract with plaintiffs, nor to admit plaintiffs' employees to membership, to wit, the reasons that plaintiffs refused to negotiate with the union during the course of an important strike, but tried to break the strike, following which—as the union believes—one of plaintiffs shot and killed a union member.

Under these circumstances the Court below correctly said (143 F. 2d 902, 904):—

“The *Sherman Act*, said Justice Stone in the *Apex Hosiery Co. case*,\* was ‘not enacted to police interstate transportation, or to afford a remedy for wrongs, which are actionable under state law, and result from combinations and conspiracies which fall short, both in their purpose and effect, of any form of market control of a commodity, such as to ‘monopolize the supply, control its price, or discriminate between its would-be purchasers.’ ”

“With the right of the plaintiffs to recover in some other action upon some other theory we have no concern. All that is before us is whether they have brought themselves within the purview of the *Sherman Act*, as amended. For the reasons already stated we agree with the district court’s conclusion that they have not.”

To the same effect are—

*Western Union Telegraph Co. v. International Brotherhood of Electrical Workers, Local Union No. 134 et al* (1943), 133 F. 2d 955, 957;  
*Gundersheimer’s, Inc. v. Bakery and Confection-*

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\* *Apex Hosiery Co. v. Leader* (1940), 310 U<sup>2</sup> S. 469, 512, 60 S. Ct. 982, 1002, 84 L. Ed. 1311, 1333.

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- ery Workers' International Union of America* (1941), 119 F. 2d 205, 206;  
*United States v. Local 807 International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, et al.* (1941), 118 F. 2d 684, 685, 686;  
*United States v. Gold, et al.* (1940), 115 F. 2d 236, 237, 238;  
*United States v. Bay Area Painters and Decorators Joint Committee, Inc. et al* (1943), 49 F. Supp. 733, 735;  
*United States v. Swift & Co.* (1942), 46 F. Supp. 848, 851, 852;  
*United States v. Aluminum Company of America, et al.* (1941), 44 F. Supp. 97, 105;  
*Swartz v. Forward Association, et al.* (1941), 41 F. Supp. 294, 295, 296.

Plaintiffs have cited numerous authorities which are too obviously distinguishable on the facts to require comment other than to say that whereas none of them involve the right of a labor union's freedom to contract or freedom to select its own members, they do all involve the elements of price or volume control of interstate commerce and a substantial interference with the competitive process.

Wherefore it is submitted that the Petition for Certiorari should be dismissed.

All of which is respectfully submitted.

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